

Appl. No. : 09/890,416
Filed : July 27, 2001

REMARKS

Claims 11 and 19 has been amended and Claims 1-3 and 7-10 have been cancelled without prejudice. As a result, Claims 11 and 19-29 remain pending in the present application. Support for the amendments can be found in the Specification and claims as filed. Accordingly, the amendments do not constitute the addition of new matter. Reconsideration of the application in view of the foregoing amendments and the following comments is respectfully requested.

Rejections under 35 U.S.C. § 102

The Examiner rejected Claims 19, 26, 27, and 29 under 35 U.S.C. § 102(b) as being anticipated by Ruf et al. The Examiner is maintaining the viewpoint that Ruf discloses that wine and grape seed extract exert a protective effect against platelet aggregation and that wine tannins contain resveratrol.

According to M.P.E.P. 2131, “[a] claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference.”

As amended, Claim 19 recites, *inter alia*, “[a] method for preventing cerebral apoplexy in a mammal, comprising administering to said mammal a composition comprising an effective amount of at least one member...wherein said composition does not contain ethanol.” Support for the amendment can be found in the Specification. Experimental Example 2 of the Specification discloses results showing that administration of a composition comprising a Formula (I) compound without ethanol resulted in prevention of onset of cerebral apoplexy. Furthermore, the specification discloses two examples (Examples 2 and 8) that contain ethanol, but these examples exemplify compositions for use as a plaster and as a mouthwash, respectively. In forms of a plaster or mouthwash, the composition is not in a form for use in preventing cerebral apoplexy. Other examples, especially examples illustrating ingestible forms, do not show compositions containing ethanol.

Accordingly, for a method of preventing cerebral apoplexy, the compositions do not contain ethanol. This recitation patentably distinguishes the presently pending claims from Ruf

Appl. No. : 09/890,416
Filed : July 27, 2001

et al. On page 143, first column, lines 26-28, Ruf et al. discloses that “only wine with alcohol was associated with a decrease in platelet aggregation compared to water. In contrast, the wine without alcohol increased the response of platelets to aggregation.” Then, at page 144, first column, lines 1-3, Ruf et al. states “the wine without alcohol was associated with a significant increase in platelet aggregability.” Accordingly, the effect of inhibition of platelet aggregation can be attributed to the ethanol present in the wine. As such, the compositions of Ruf et al. comprise ethanol for the effect of inhibition of platelet aggregation to occur. As amended, Claim 19 does not recite embodiments of Ruf et al.

Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 102(b).

Moreover, the Ruf et al. reference teaches away from the claimed method by suggesting that resveratrol-containing composition without ethanol, namely “wine without alcohol” actually increased platelet aggregation. Thus, the presently-claimed invention of Claims 19, 26, 27, and 29 is patentable over the Ruf et al. reference.

Rejections under 35 U.S.C. § 103

The Examiner rejected Claims 1-3, and 7-10 under 35 U.S.C. § 103(a) as being unpatentable over Hirschberg.

Claims 1-3 and 7-10 have been cancelled without prejudice. Accordingly, the rejection under 35 U.S.C. § 103(a) in view of Hirschberg is moot.

The Examiner rejected Claims 1-3, 7-11, and 20-25 under 35 U.S.C. § 103(a) as being unpatentable over Mizutani et al., and in further view of Caspar et al., and further in view of CN 1127070.

The Examiner relied on Mizutani et al. to show that resveratrol directly stimulates cell proliferation and differentiation of osteoblasts *in vitro*. Similarly, the Caspar reference discloses the use of resveratrol for osteogenic cell differentiation and mineralized bone formation. CN 1127070 discloses a laundry list of ingredients for a composition and asserts numerous conditions that can be treated with administration of the composition. In a previous Amendment,

Appl. No. : 09/890,416
Filed : July 27, 2001

it was argued that one of ordinary skill in the art would not expect increases in bone breaking load and strength with administration of the preferred compositions. The Examiner stated that while he agrees with the argument, Applicants did not recite these limitations in the claims.

As amended, Claim 11 recites, *inter alia*, "[a] method for preventing or treating diseases accompanied by a decrease in bone weight in a mammal comprising increasing bone breaking load and strength in said mammal by administering to said mammal at least one member selected from the compound represented by Formula (1) or a multimer thereof." Therefore, as amended, Claim 11 recites the features that the Examiner agrees distinguish the invention from the cited prior art.

Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejections under 35 U.S.C. § 103(a).

CONCLUSION


In view of the foregoing amendments and comments, it is respectfully submitted that the present application is fully in condition for allowance, and such action is earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call the undersigned in order to resolve such issue promptly.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: September 13, 2004

By: 
Connie C. Tong
Registration No. 52,292
Agent of Record
Customer No. 20,995
(949) 760-0404